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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
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Agenda item 10 (d)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

THE RIGHT TO A FAIR TRIAL

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 August 1991]

FAIR TRIAL, DUE PROCESS AND "NON-JUDICIAL PROCEEDINGS"

WHEN ARE MOST PEOPLE HURT BY UNFAIRNESS?

1. Governments, whether they be powerful or weak, rich or poor, huge or tiny, everywhere and often penalize and deprive individuals of human rights by resorting to a process called administrative adjudication. Too many jurists, unfortunately, ignore the gross violations that thus are perpetrated.

2. One explanation of the phenomenon is that throughout the world most lawyers, whether they serve Governments or private clients, traditionally have been taught by professors to focus on advocacy before courts, and relatively little attention has been given to "administrative judging".

3. That fact is noted briefly in the admirable report by Mr. Chernichenko and Mr. Treat. Not only do they identify distinctions between criminal and civil trials; they also refer to non-judicial trials. (See, for example, paras. 70, 79-80, 85, 89, 94, and 100-101 of E/CN.4/Sub.2/1991/29.)

4. In most nations, incalculably more people are harmed seriously by administrative decisions than by judicial decisions:

(a) Refugees. For every group of hopeful refugees and other displaced people whom courts are able to assist, hundreds of thousands of others have their rights (and even their fate) determined finally by non-judicial officials, and the injustices too often are notorious;

(b) Administrative detainees. This Sub-Commission has become expert regarding the mentally and physically disabled, the disappeared, the enslaved, the forced labourers, the "suspects", and the tragically innumerable others for whom habeas corpus, amparo, and other judicial relief is in fact a mere mirage;

(c) Men, women and children who are employees. For a century or more, difficulties concerning rights to decent working conditions, to organize, to picket and demonstrate, to strike, to insurance and pensions and much more have been adjudicated mostly by government officials who are not judges;

(d) Persecuted individuals. Paragraph 161 of the annotated agenda (E/CN.4/Sub.2/1991/Add.1) refers to men and women "prosecuted or persecuted merely because of ... connection ... with a suspect, an accused person or a person who has been convicted". Judges are the ones who handle prosecutions. Administrative officials, however, are the ones who effect innumerable persecutions.

(e) Other victims of unfair administrative trials. The list seems endless because the scope of non-judicial empowerment is indeed likely to observe boundaries that are limitless.

How might this Sub-Commission respond?

5. Scholars who study administrative law have for decades examined (and helped to improve) both formal and informal administrative trials of many kinds. Excerpts from documents prepared in Geneva three decades ago, for a conference sponsored by the International Commission of Jurists, could be made available and, we believe, would be useful and instructive.